



## **Summary of Initiative 297**

Concerning mixed radioactive and nonradioactive hazardous wastes.

This information has been prepared in response to various requests for a summary of the provisions of Initiative 297, which will be before the voters at the statewide general election on November 2, 2004. The material in this summary is provided for informational purposes only. It is provided for use by members of the Legislature and legislative staff. It is not provided as an expression for or against any of the provisions of Initiative 297. A copy of the initiative is available from the Secretary of State's Office directly or on the web at: <http://www.secstate.wa.gov/elections/initiatives/text/i297.pdf>.

### **BRIEF SUMMARY**

The initiative prohibits additional mixed radioactive and hazardous waste ("mixed waste") from being brought to the Hanford Nuclear Reservation ("Hanford") until the existing on-site waste conforms to all state and federal environment laws. New requirements are established for sites and facilities, such as Hanford, that handle mixed radioactive and hazardous waste. The initiative also increases grant funding to help the public and local governments evaluate permit, closure, and cleanup decisions, and to review funding priorities.

### **INCREASED REGULATION OF MIXED WASTES**

The Department of Ecology ("the Department") must regulate mixed radioactive and hazardous waste ("mixed waste") to the fullest extent possible, where not preempted by federal law.

The owner or operator of a facility that handles mixed wastes must obtain a "final facility permit" from the Department before any additional mixed wastes, not generated at the facility, may be brought to the facility. The facility's activities must be in compliance with all relevant state and federal environmental laws prior to receiving a final facility permit.

The Department may not grant or modify a treatment, storage, or disposal permit if a release of a hazardous substance has occurred at a facility and the release, or the cumulative impact of all releases, may exceed surface or ground water standards, or cleanup or other standards protective of human health or the environment. An exception may be allowed when necessary to accomplish the remediation or closing of existing facilities.

Note: The initiative makes references to complying with federal laws "as amended." The state supreme court has indicated that an attempt to incorporate future changes in federal laws or regulations would be an invalid delegation of state legislative power. See State v. Dougall, 89 Wn.2d 118 (1977).

## **RELEASES OF RADIOACTIVE SUBSTANCES**

The clean-up standards applying to releases of radioactive substances or radionuclides must be equal to the standards for other substances posing similar health risks. In calculating cleanup standards, corrective action levels, or maximum allowable projected releases from landfills and facilities that have mixed wastes, the Department must consider the effects of all of the waste's known or suspected human carcinogens. The Department must ensure that the cumulative risk from all of these carcinogens does not exceed acceptable standards, or a maximum of one additional cancer per 100,000 individuals exposed, whichever is more protective.

## **DISPOSAL, INVESTIGATION, AND CLEANUP OF WASTE IN UNLINED TRENCHES; AND CLOSURE OF MIXED WASTE TANK SYSTEMS**

Within 60 days of the effective date of the initiative, the Department must order any site owner or operator with mixed waste in unlined trenches to:

- (a) cease disposal in the trenches or facilities within thirty days;
- (b) prepare an inventory of the actual characterization of all hazardous substances potentially disposed of in the trenches;
- (c) investigate releases or potential releases of any hazardous substances in the trenches;
- (d) prepare a plan for waste retrieval, treatment, closure, and monitoring for the trenches; and
- (e) within two years, install and maintain a ground water and soil column monitoring system.

Public notice, hearings, and comment on the scope of these investigations and actions are required.

Applications to expand existing facilities or create new facilities are not allowed at any site with unlined trenches containing mixed wastes where:

- (a) the wastes have not been fully characterized;
- (b) a release of a hazardous or radioactive substance or mixed waste has occurred; or
- (c) there is a significant potential for a release of hazardous substances.

The Department's decisions relating to the closure of tank systems must consider the cumulative and potential impacts of all tank residuals and leaks. Before the Department allows closure of a site with mixed wastes, the owner or operator must take

all potentially effective and practicable actions to characterize and remediate releases, and potential releases, of mixed wastes.

## **DISCLOSURE OF COSTS AND BUDGETS**

The owners or operators of a mixed waste facility who have had releases of hazardous substances must disclose their projected total and annual costs necessary to meet the legal requirements associated with their facilities. State or federal agencies that own or operate mixed waste facilities must also disclose budgets or budget requests for the current year and next three years. Annual disclosures by federal agencies must include a comparison of the cost estimates of all required activities versus the amount of funds requested and the amount appropriated. The Department must hold public hearings on the disclosures.

## **EXEMPTIONS**

The initiative provisions do not apply to the U.S. Navy's storage or disposal of permitted nuclear reactor components of submarines or vessels.

The provisions also do not apply where they would interfere with the obligations of the state under the Northwest Interstate Compact on Low-Level Radioactive Waste Management (the "Compact"). However, relevant provisions that do not interfere with state obligations would apply to any facility operated pursuant to the Compact if any hazardous or mixed waste was disposed or released at that facility.

## **PUBLIC INVOLVEMENT**

The Department must ensure that facility permits issued for any site or facility where there has been a release of mixed waste must include funding for "a broadly representative advisory board."

The initiative limits the membership of the advisory board to representatives chosen by the following groups: potentially affected tribes; regional and statewide citizen groups with an established record of concern with human health or environmental impacts related to releases of waste at the facility; local groups concerned with health and resource impacts; local governments; and, if certain conditions are met, the state of Oregon.

The Department must request the board to advise it on procedural and substantive matters requiring informed public comment. The department must formally consider and respond to any comments from the advisory board prior to issuing any decision on a remedial, corrective, or closure action.

The Department must assess fees for its own oversight and permitting functions and

include assessments to cover local government and public participation grants.

## **ENFORCEMENT AND APPEALS**

A cause of action is created, allowing citizens to file lawsuits to compel owners or operators of mixed waste facilities to comply with relevant laws and administrative orders. Citizen lawsuits are also authorized to compel the Department to perform any nondiscretionary duties. Attorney fees and costs may be awarded to prevailing plaintiffs.

Any person whose interests, in natural resources or in their health, may be adversely affected by an order, action, or inaction of the Department is granted legal standing to file an appeal with the Pollution Control Hearings Board.

Violations of the provisions of the initiative are subject to enforcement by the Department or Attorney General, including the imposition of civil or criminal penalties.

## **FISCAL IMPACT & FEES**

According to the Office of Financial Management, Initiative 297 is estimated to cost the general fund \$92,000 in the 2003-05 biennium and \$167,000 in the 2005-07 biennium. The total fund costs are estimated at \$613,000 in 2003-05 and \$4.6 million in 2005-07.

Federal revenues, which are assumed to cover most of the fiscal impact, would be generated from an increase in the mixed waste management fees charged to the U.S. Department of Energy.

The general fund costs are for the Department of Health and the Environmental Hearings Office. The remaining costs would be incurred by the Department of Ecology and the Office of the Attorney General. About half of the cost for the 2005-07 biennium (\$2.4 million) is for the public participation grant program required in section 9. This would be an ongoing cost.

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